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Chapter 11 Trustee for Desert Oasis Apartments, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

DESERT OASIS APARTMENTS, LLC,

Debtor.

Case No.: BK-S-18-12456-GS

Chapter 11

**CHAPTER 11 TRUSTEE KAVITA
GUPTA'S MOTION TO APPROVE
DISBURSEMENT OF ADDITIONAL
SUMS OWING TO BUYER ED-DEN
UNDER SALE ORDER**

Date: January 11, 2021
Time: 9:30 a.m.
Judge: Hon. Gary Spraker

Kavita Gupta ("Trustee"), Chapter 11 trustee for the estate of Desert Oasis Apartments, LLC ("Estate"), hereby seeks an order authorizing the disbursement of \$12,590.00 to ED-DEN Investment Co. LLC ("Buyer") as additional sums owing to Buyer under the *Order Granting Chapter 11 Trustee Kavita Gupta's Motion to Approve Sale of Debtors' Assets Free and Clear of Liens and Grant Related Relief – Lot 5* [Doc No. 1264 in formerly jointly administered lead Case No. 18-12454] (the "Sale Order"). In support of this Objection, the Trustee respectfully represents as follows:

1 The Estate owned a parcel of real property commonly known as 5316 Danville
2 Lane/5331 Bethel Lane, Las Vegas, Nevada (“Apartments”). On January 3, 2020, this Court
3 entered an order (“Bid Procedures Order”) approving auction and bidding procedures for several
4 parcels of real property, including the Apartments [Doc. No. 972 in Case No. 18-12454].

5 To qualify as a bidder in the auction of the Apartments, Buyer entered into a Purchase
6 and Sale Agreement (“Sale Agreement”) with the Estate effective April 30, 2020 and subject to
7 the Court’s approval of Buyer as the successful bidder at the auction pursuant to the Bid
8 Procedures Order. *See* Declaration of Bidder in Support of Sale Motion and Finding of Good
9 Faith Under 11 U.S.C. §363(m), Exhibit A [Doc. No. 1237 in Case No. 18-12454].

10 The auction of the Apartments was held before the Court on June 5, 2020 and Buyer was
11 the successful bidder after increasing its bid to \$15,600,000.00 during the auction. The Sale
12 Order approving the sale of the Apartments to Buyer was entered on June 15, 2020 and the sale
13 closed on June 30, 2020 (“Closing Date”).

14 Pursuant to the Sale Agreement and the Sale Order, Buyer was to receive credits upon
15 closing for (i) all rents and other sums due and payable or paid under existing month-to-month
16 leases with tenants for the period after the Closing Date and (ii) any security deposits held by the
17 Estate or owed to tenants at the Apartments (the “Prepaid Rent and Deposit Credits”). *See* Sale
18 Agreement, Art. IV at ¶ 3.d and Sale Order, ¶4. Pursuant to the Sale Order, Buyer is solely
19 responsible for all existing tenant deposits post-Closing. *See* Sale Order, ¶4. While certain
20 amounts were credited or (with respect to undeposited receipts) turned over to Buyer at Closing
21 on account of the Prepaid Rent and Deposit Credits, subsequent reconciliations between the
22 Trustee and Buyer revealed that additional sums were owing to Buyer on account of the Prepaid
23 Rent and Deposit Credits.

24 Prior to Closing and as an accommodation to Buyer to allow for the transition of the
25 utility accounts related to the Apartments, the Trustee and Buyer entered into a Utilities Reserve
26 letter agreement on June 29, 2020 (the “Utilities Reserve”). Under the Utilities Reserve, \$10,000
27 otherwise due to Buyer at Closing remained in escrow pending reconciliation of final utility bills
28 to the Estate. The Buyer was given 15 days from the Closing Date to complete the transfer of all

1 utility accounts. Any charges accrued from the Closing Date forward on the Estate's accounts
 2 would be paid by the Trustee and deducted from the funds set aside in the Utilities Reserve. On
 3 August 28, 2020, the Trustee provided the required accounting to Buyer of the payments made
 4 on the utility accounts under the Utilities Reserve (the "Utilities Accounting"). On or about
 5 September 21, 2020, the funds held in escrow under the Utilities Reserve were distributed to the
 6 parties in accordance with the Utilities Accounting, with \$8,163.61 released by the escrow agent
 7 to Buyer and the balance remitted to the Trustee for reimbursement for the post-Closing utilities
 8 paid. Buyer asserts it is entitled to certain additional, minor credits under the Utilities Reserve.
 9 The Trustee disputes this assertion.

10 To resolve the accountings as to both the Prepaid Rent and Deposit Credits and the
 11 Utilities Reserve, the Trustee and Buyer entered into a Final Accounting Agreement and Release
 12 ("Final Accounting Agreement"). A copy of the Final Accounting Agreement, which sets forth
 13 in more detail the credits applied and owing, is attached as Exhibit A to the declaration of Kavita
 14 Gupta filed concurrently with this Motion and in support thereof. Pursuant to the Final
 15 Accounting Agreement, the parties have agreed that Buyer should receive an additional
 16 \$12,590.00 in full satisfaction of all amounts owing to Buyer on account of either the Prepaid
 17 Rent and Deposit Credits or the Utilities Reserve.

18 Paragraph 9 of the Sale Order requires the Trustee to hold any net proceeds of sale
 19 pending further order of the Court. The Trustee, therefore, brings this current motion to allow
 20 the Final Payment from the net proceeds currently held by the Trustee. The Trustee submits
 21 such further adjustment is warranted under the terms of the Sale Agreement and Sale Order.

22 Wherefore, the Trustee prays for an order:

- 23 1. Authorizing the Trustee to enter into the Final Accounting Agreement and to
- 24 disburse the sum of \$12,590.00 to Buyer, with payment to be remitted as Buyer so directs; and
- 25 2. For such further relief as the Court deems just and proper.

26 Dated: November 25, 2020

NUTI HART LLP

27 By: /s/ Kimberly S. Fineman

Kimberly S. Fineman
 Attorneys for Kavita Gupta, Chapter 11 Trustee for
 Desert Oasis Apartments, LLC